

Del Carmen & Mangal, PC
Attorneys and Counselors at Law
87-87 Francis Lewis Blvd., 2nd Fl., Queens Village, NY 11427

Tamara del Carmen, Esq. *
Yovendra Mangal, Esq. ^

Telephone: (718) 464-4448
Facsimile: (718) 464-0034

*Admitted in NY & NJ
^Admitted in NY

November 20, 2009

Honorable Patty Shwartz
PO 10
U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

Re: Peters et al. v. David et al.
Proposed Pretrial Order
Case No.: 07-2210 (KSH-PS)

Dear Judge Patty Shwartz:

Our office submits this letter in objection to the proposed pretrial order filed by plaintiffs. Pursuant to Your Honor's Order, the plaintiffs were to provide defendants with an electronic version of their portion of the proposed pretrial order by November 6, 2009. Despite this order, the plaintiffs provided the defendants with their portion on November 9, 2009. Pursuant to the order, Defendants provided the plaintiffs with their portions of the proposed pretrial order on November 13, 2009. Plaintiffs were then ordered to provide defendants with the assembled order intended to be submitted for review no later than November 16, 2009. The plaintiffs were then ordered to deliver a copy to Chambers by November 17, 2009.

Plaintiffs failed to provide the defendants with an assembled order for review and failed to deliver a copy to chambers. As such, the deadline for plaintiffs to deliver a proposed pretrial order was extended to November 19, 2009. I contacted Mr. Klein on November 17, 2009, to obtain a status on the assembled order and was told that it was to be e-mailed later that evening. On November 18, 2009, an e-mail was sent by Mr. Klein's office that contained the proposed pretrial order with new additions on the plaintiffs' portion. The same day defendants and plaintiff were exchanging comments and revisions through e-mail. Plaintiff provided the defendants with a proposed pretrial order attached hereto. (Attachment "1".) Defendants submitted comments to be incorporated in the proposed pretrial order. Thereafter, plaintiffs never provided the defendants with any other version of the proposed pretrial order.

Unbeknownst to the defendants, Mr. Klein filed a document entitled proposed pretrial order with the Court. (See Docket Entry No. 68). Upon review of the proposed pretrial order filed by plaintiffs, Mr. Klein substantially changed portions of the proposed pretrial order by changing and including new portions to the proposed pretrial order. At no time prior to filing did Mr. Klein provide the defendants with this version. Mr. Klein has clearly acted in bad faith. It

was extremely deceitful and unprofessional of Mr. Klein to file a proposed pretrial order with unilateral changes, additions and revisions in an attempt to gain an unfair advantage and without providing any notice to defendants. Moreover, Mr. Klein's latest dilatory tactic unjustly prejudices the defendants and undermines the integrity of this judicial system. The plaintiffs have repeatedly failed to comply with the Rules and Orders of this Court since the inception of this case.

Defendant Roland David joins in this application and objects to the plaintiffs proposed pretrial order. Please see the attached e-mail/letter from Mr. Tomas Espinosa. (Attachment "2").

Based upon the foregoing, we respectfully request that this Honorable Court strike plaintiffs' portions of the proposed pretrial order that were not submitted to defendants prior to filing for review with prejudice, and allow the defendants the opportunity to review and submit comments to the plaintiffs to be included in a final proposed pretrial order to be fully submitted to the Court.

Respectfully submitted,


Tamara Ann L. Del Carmen, Esq.

cc: Shmuel Klein, P.C. via CM/ECF system
Tomas Espinosa, Esq. via CM/ECF system